



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:       Semcor, Inc.  
File:             B-227050  
Date:             August 20, 1987

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### DIGEST

1. Protest by incumbent that awardee proposed materially unbalanced fixed hourly labor rates, in response to solicitation for indefinite quantity, time-and-materials contract, will not be considered where the incumbent's challenge to the solicitation's workload estimates, that they bore no relation to the historical workload, was not made until after award.
2. Protester does not demonstrate that awardee proposed materially unbalanced fixed hourly labor rates, in response to solicitation for indefinite quantity, time-and-materials contract, where it does not appear that examples of mathematical unbalancing in proposal cited by protester would affect the outcome of the competition.

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### DECISION

Semcor, Inc. protests the award of a contract to SRS Technologies under request for proposals (RFP) No. DAAH01-86-R-0402, issued by the United States Army Missile Command (MICOM) for technical support for production/producibility engineering. Semcor alleges that SRS submitted an unbalanced proposal in response to a solicitation that included defective workload estimates. We dismiss the protest in part and deny it in part.

The solicitation contemplated award of a 2-year, indefinite quantity, time-and-materials contract for production engineering services (including manufacturing research and the development of concepts for computer-integrated manufacturing). The evaluation was to be based on numerical scores, with price and technical factors being weighted equally. The solicitation required offerors to submit fixed hourly prices for 29 labor categories, ranging from clerical staff to senior engineers. For evaluation purposes, the hourly price for each labor category was to be multiplied by a government-provided estimate of the number of hours of

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expected use for that category, and the resultant total labor cost would be added to the other costs.

Six offerors submitted proposals in response to the solicitation; all were included in the competitive range and were requested to submit best and final offers (BAFOs). Review of BAFOs led the chairman of the technical evaluation committee to conclude that the cost proposals submitted by three of the offerors, including SRS, were unacceptable. He stated in this regard that SRS seemed to be trying to "buy-in" on the contract by proposing very low rates for most labor categories, with the intention of furnishing only those labor categories with a sizable profit margin on any subsequent task orders.

The agency then amended the solicitation to provide that materially unbalanced proposals might be rejected and requested a second round of BAFOs. In the BAFO evaluation, SRS, whose proposal offered the lowest evaluated cost, received the highest overall score, while Semcor, whose proposal offered the next lowest evaluated cost, received the second highest overall score. The chairman of the technical evaluation committee again reported, however, that SRS' cost proposal was unacceptable based on skewed labor rates, contrary to the amendment.

The contracting officer disagreed with the chairman, however, finding no evidence that SRS' individual labor rates failed to carry their proportionate share of total cost or that they were based on nominal prices for some and overstated prices for other categories. Concluding that SRS' proposal was not materially unbalanced, he made award to SRS. Semcor protested to our Office within 10 days of award, and MICOM has directed SRS to suspend performance pending our decision.

Semcor alleges that SRS' proposal should have been rejected as materially and mathematically unbalanced based on its skewed labor rates. At the same time, Semcor challenges the workload estimates in the solicitation on the basis that they bore no relation to the actual workload under Semcor's preceding contract to furnish technical support for production/productibility engineering. Semcor points out in this regard that MICOM estimated the first-year requirements for each labor category under the contemplated contract based on approximately 160 percent of the prior contract estimates, but that actual workload under the prior contract differed from those estimates by as much as 343 percent.

MICOM maintains that Semcor's post-award challenge to the workload estimates is untimely. We agree.

Our Bid Protest Regulations, 4 C.F.R. part 21, are intended to provide for expeditious consideration of procurement actions without unduly disrupting the government's procurement process. See Sharon R. Riffe-Cobb--Request for Reconsideration, B-223194.2, et al., June 25, 1986, 86-2 CPD ¶ 9. Toward this end, they require that protests based upon alleged improprieties apparent on the face of a solicitation be filed prior to the time set for receipt of initial offers. 4 C.F.R. § 21.2(a)(1). This particular requirement is intended to enable the contracting agency to decide an issue while it is most practicable to take effective corrective action where the circumstances warrant. Ratcliffe Corp.--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

While we have previously considered allegations of defective solicitation workload estimates even though the allegation was first raised after the time set for receipt of offers, see generally Paragon Van Lines, Inc., B-222018.2, June 25, 1986, 86-1 CPD ¶ 591, we generally have done so only where there was no clear evidence that the protester was on notice of the deficiency. Semcor, however, was not merely another potential offeror. Rather, it was the incumbent contractor and therefore must have known that the estimates differed from the historical workload. Its delay in raising this issue, a delay of almost 7 months from the time set for receipt of initial proposals, deprived the agency of the opportunity to consider corrective action, if warranted, before the expenditure of significant time and effort. We also note that SRS would remain the low offeror whether the actual workload under the prior contract or 160 percent of that workload were used for applicable labor categories.

As to whether SRS's proposal is unbalanced, we have held that an offer is materially unbalanced where: (1) it is mathematically unbalanced, that is, each item does not carry its share of the cost of the work, or is based on nominal prices for some of the work and enhanced prices for other work; and (2) award based on a mathematically unbalanced offer will not result in the lowest overall cost to the government.<sup>1/</sup> The key to this latter determination is the validity of the government estimates, since it is the estimate (multiplied by proposed rates) upon which cost to the government is determined; unless the solicitation

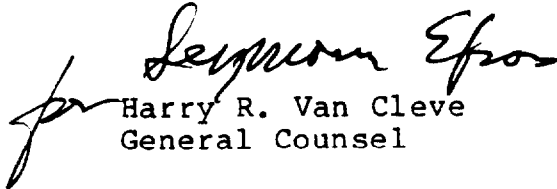
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<sup>1/</sup> Although the concept of unbalancing generally applies to require rejection of a materially unbalanced bid, it also may apply to negotiated procurements where cost or price constitutes a primary basis for source selection. See generally Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 CPD ¶ 259.

estimates are inaccurate, a low evaluated offer generally is not materially unbalanced. See generally Landscape Builders Contractors, B-225808.3, May 21, 1987, 87-1 CPD ¶ 533.

Here, it does not appear that the examples of mathematical unbalancing in SRS' proposal cited by the protester would affect the outcome. SRS proposed an evaluated cost (\$5,998,375) which is \$750,00 less than the evaluated cost (\$6,748,389) offered by Semcor. We see at most 3 out of 29 labor categories where arguably SRS' rates were too high compared to the other prices offered for the same categories; therefore, the extent of unbalancing does not appear to be significant. On this record, we cannot conclude that SRS' proposal should have been rejected as unbalanced.

The protest is dismissed in part and denied in part.

  
Harry R. Van Cleve  
General Counsel